STATE OF COLORADO

DEPARTMENT OF REVENUE

State Capitol Annex 1375 Sherman Street, Room 409 Denver, Colorado 80261 Phone (303) 866-3091 FAX (303) 866-2400



Bill Ritter, Jr. Governor

Roxanne Huber Executive Director

GIL-2009-029 June 23, 2009

Re: oilfield fishing equipment

Dear **********,

You request guidance regarding the applicability of state and local sales and use tax to leases of oilfield fishing equipment. The Department issues general information letters and private letter rulings. A general information letter provides a general overview of the applicable tax law, does not provide a specific determination, and is not binding on the department. A private letter ruling is a determination of the applicability of tax to a specific set of circumstances and is binding in the department. A party requesting a private letter ruling must provide certain information and remit a fee. For more information about general information letters and private letter rulings, please refer to the Department's regulation 24-35-103.5, C.R.S., which is available on our web site at: www.colorado.gov/revenue/tax.

I will initially treat your request as one for a general information letter. You may resubmit this request as one for a private letter ruling if you require a more specific determination.

Issue

- 1. Is the lease of oilfield fishing equipment and related charges, such as operator services, mileage, and subsistence, subject to tax?
- 2. Is the lease subject to local taxes in local jurisdictions where the Company does not have an office if the company provides an operator for the equipment?

Background

Your company provides oilfield fishing services. The company headquarters is outside

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Colorado, but I assume from the nature of the questions posed that the company has offices in both Mesa County, Colorado and Denver, Colorado. Oilfield fishing equipment is not described.

Discussion.

Colorado levies sales and use tax on the lease of tangible personal property. §39-26-104(1), C.R.S. Except for certain services not at issue here, services are generally not subject to sales tax. In some instances, there is a mix of both the use of tangible personal property and the provision of services. If the true object of the transaction is the provisioning of a service, then the transaction is not subject to tax. For example, the customer's true object of a contract for the rental of a tractor is the use of the tractor and, therefore, the use of that tractor is taxable. On the other hand, the customer's true object of hiring a tractor operator and tractor is the hiring of a service and, therefore, the contract is not taxable. Although this rule is easy to state in the abstract, it is often times difficult to apply in practice. The department will consider a number of factors, including whether the lessor charges a lump sum or separately charges for the operator and rental of the property, whether the lessor provides the option to rent the property without an operator, whether the lessee has obligations normally associated with someone who has a possessory interest in the property (e.g., obligations for risk of loss and insurance), and whether the operation of the property requires special skills not possessed by the lessee. In any event, and as noted above, the department does not make a specific determination in a general information letter.

A sale typically occurs at the point of delivery. Thus, when a retailer delivers property to a customer, the sale is deemed to occur at the customer's location. A retailer will have sufficient presence (nexus) in a local jurisdiction if it delivers the leased equipment to the customer and provides additional services, such as repair and maintenance or an equipment operator. FYI Sales 56. Of course, there is no sales tax obligation if the contract is deemed to be one for a service and not the lease of tangible personal property.

Finally, note that if the lessee is in a special district that imposes use tax on tangible personal property (e.g., a rural transportation authority), and the contract is a taxable lease, then the lessor must collect special district's use tax from the lessee. See, FYI Sales 56. If the lease to the lessee is a non-taxable service contract, the lessor is still liable for its own use of the equipment in the special district. For a list of special districts, see Department Publication DRP 1002.

Miscellaneous

Please note that the department administers only state and state-collected sales and use taxes and does not collect or administer the sales and use taxes of home rule cities and counties. For a list of state-collected cities, counties and special districts, and home rule cities and counties, see Department publication DRP 1002, which is

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available on the department's website at www.taxcolorado.org > Forms. Contact these home rule jurisdictions for information about their sales and use taxes.

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted version of the ruling.

Sincerely,

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